



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNL, FF
For the landlord: OPL, MNDC, MNR, FF

Introduction and Preliminary Matters

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession due to another use of the property by the landlord, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

This hearing began on November 4, 2014, and the parties agreed to an adjournment as the tenant was attempting to secure another residence.

At the present hearing, the tenant confirmed that he had vacated the rental unit, on December 2; the landlord submitted that the tenant vacated on December 3, 2014.

As the tenant no longer required consideration of his request to cancel the landlord's Notice and as the landlord no longer required consideration of vacant possession of the rental unit, the hearing proceeded on the remaining issues in both applications.

At the hearing, the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to recovery of the filing fee paid for this application?
2. Is the landlord entitled to monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

This tenancy began on December 15, 2014, monthly rent was \$800, and the tenant paid a security deposit of \$400 at the beginning of the tenancy, according to the undisputed evidence presented at the hearing.

The additional undisputed evidence was that the landlord served the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property on September 1, 2014, for an effective move-out date of October 31, 2014. A 2 month notice to end the tenancy is not effective earlier than two months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, two clear calendar months before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to November 30, 2014.

As to the landlord's monetary claim for \$2400, the landlord stated that the claim was for unpaid rent for September, October, and November 2014. The landlord's application, however, did not list the months for which the claim pertained.

In response, the tenant submitted that when the landlord's application was made in September 2014, it would not be possible to claim for unpaid rent for October and November. Further to this argument, the tenant submitted that the claim of \$2400 would have been for unpaid rent for July, August, and September 2014, and that he has paid rent for these months, as shown by the documentary evidence he submitted in advance of the hearing.

The tenant also submitted that he was entitled to recovery of his filing fee, because even though he accepted that the tenancy was ending pursuant to the landlord's Notice,

it was necessary to file an application for dispute resolution as the effective end of the tenancy date listed on the Notice was invalid.

Analysis

Tenant's application-

I accept the tenant's submission that he was entitled to recovery of his filing fee due to the necessity of filing an application to ensure that the effective end of tenancy date was changed to November 30, 2014, as noted above.

I therefore grant the tenant a monetary award of \$50.

Landlord's application-

As to the landlord's monetary claim of \$2400, I refuse his application for dispute resolution requesting monetary compensation, pursuant to section 59 (5)(a) of the Act, because his application for dispute resolution did not provide sufficient particulars of his claim for compensation, as is required by section 59(2)(b) of the Act. I was unable to determine for which months the landlord's claim for unpaid rent pertained, as the landlord did not provide a breakdown or details of his claim, and the tenant testified that he believed the claim was for months in which he had paid rent.

The landlord is at liberty to re-apply for his monetary claim. As I have refused the portion of the landlord's application seeking monetary compensation and it was not necessary to file seeking an order of possession due to the tenant's application being filed, I decline to award the landlord recovery of his filing fee.

Conclusion

The issue surrounding the landlord's 2 Month Notice was not considered as the tenancy has ended.

The tenant has been granted a monetary award in the amount of \$50. I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$50, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small

Claims) for enforcement as an order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

The landlord's application seeking monetary compensation is refused and he is at liberty to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 12, 2014

Residential Tenancy Branch

